

Chapter 7: Felony Offenses in the Michigan Vehicle Code



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This chapter contains an overview of attempted traffic offenses, and felony traffic offenses found in the Michigan Vehicle Code. However, it does not include offenses under Vehicle Code §625 and §904, which are the subject of Part I of this volume. The discussion of each offense contains the following elements where relevant:

- The name of the offense.
- The text of the statute creating the offense.
- A summary of the elements of the offense.
- Criminal penalties.
- Licensing sanctions.
- Issues of importance to deciding cases involving the offense.
- Related misdemeanors

7.1 Attempted Traffic Offenses

Attempted traffic offenses occurring after October 1, 1999 may be governed by either the Vehicle Code's provisions for attempt, MCL 257.204b; MSA 9.1904(2), or by the general attempt statute, MCL 750.92; MSA 28.287.

A. Vehicle Code Provisions

Effective October 1, 1999, MCL 257.204b; MSA 9.1904(2) provides for attempted traffic offenses as follows:

“(1) When assessing points, taking licensing or registration actions, or imposing other sanctions under this act for a conviction of an attempted violation of a law of this state, a local ordinance substantially corresponding to a law of this state, or a law of another state substantially corresponding to a law of this state, the secretary of state or the court shall treat the conviction the same as if it were a conviction for the completed offense.

“(2) The court shall impose a criminal penalty for a conviction of an attempted violation of this act or a local ordinance substantially corresponding to a provision of this act in the same manner as if the offense had been completed.”

Although it had not been construed by an appellate court as of the September 1, 1999 publication date of this benchbook, Vehicle Code §204b appears to distinguish between attempted offenses for purposes of imposing licensing or vehicle sanctions and for purposes of imposing criminal penalties.

*See Section 1.4(I) for a definition of “substantially corresponding law of another state.”

Licensing and vehicle sanctions—Subsection (1) apparently applies to attempted violations of *any* Michigan law or substantially corresponding law from another state* for which licensing or vehicle sanctions are imposed under the Vehicle Code. Under subsection (1), *any* attempted offense that results in licensing or vehicle sanctions under the Vehicle Code must be treated as a completed offense for purposes of imposing such sanctions, regardless of whether the offense itself constitutes a Vehicle Code violation.

Criminal penalties—Subsection (2) requires courts to treat attempted violations of “*this act*,” i.e., of the Vehicle Code or a substantially corresponding local ordinance, as completed offenses for purposes of imposing criminal penalties. Thus, subsection (2) does not apply to attempted traffic offenses arising outside the Vehicle Code, such as unlawful driving away an automobile under MCL 750.413; MSA 28.645. Criminal penalties for these offenses must be governed by the general attempt statute, MCL 750.92; MSA 28.287. See *People v Etchison*, 123 Mich App 448, 452 (1983), and *People v Denmark*, 74 Mich App 402, 416 (1977) (general attempt statute applies only where there is no express provision for attempt in the statute under which the defendant is charged).

It thus appears that for attempted traffic offenses arising outside the Vehicle Code (e.g., unlawful driving away an automobile), licensing sanctions would be governed by Vehicle Code §204b and criminal penalties by the general attempt statute.

B. General Attempt Statute

The general attempt statute, MCL 750.92; MSA 28.287 applies to attempted traffic offenses that are not covered by Vehicle Code §204b. The general attempt statute provides:

“Attempt to commit crime—Any person who shall attempt to commit an offense prohibited by law, and in such attempt shall do any act towards the commission of such offense, but shall fail in the perpetration, or shall be intercepted or prevented in the execution of the same, when no express provision is made by law for the punishment of such attempt, shall be punished as follows...”

The general attempt statute provides for two levels of punishment:

1. The attempt of an offense punishable by imprisonment for life or for five years or more is a felony punishable by imprisonment in the state prison not more than five years or in the county jail not more than one year.
2. The attempt of an offense punishable by imprisonment for less than five years is a misdemeanor. This misdemeanor is punishable by imprisonment in the state prison or reformatory not more than two years or in any county jail not more than one year or by a fine not to exceed \$1,000.00.

Any term of imprisonment under the general attempt statute shall not exceed one half of the greatest punishment which might have been imposed for the completed offense. *People v Loveday*, 390 Mich 711, 715 (1973), aff’g *O’Neil v People*, 15 Mich 275, 279–80 (1867).

C. Elements of Attempt

CJI2d 9.1 states the elements of an attempt as follows:

1. The defendant intended to commit a certain crime, which is defined as [state elements from the appropriate instructions defining the crime]; and
2. The defendant took some action toward committing the alleged crime, but failed to complete the crime. Things like planning the crime or arranging how it will be committed are just preparations; they do not qualify as an attempt. In order to qualify as an attempt, the action must go beyond mere preparation, to the point where the crime would have been completed if it hadn’t been interrupted by outside circumstances. To qualify as an attempt, the act must clearly and directly be related to the crime that the defendant is charged with attempting and not some other objective.

If factually appropriate, the jury may be instructed that it may find the defendant guilty of attempt even though the evidence convinces it that the crime was completed. *Id.*

An attempt is a specific intent crime. *People v Langworthy*, 416 Mich 630, 644–645 (1982).

7.2 Altering, Forging, or Falsifying Motor Vehicle Documents or Plates, or Unlawful Holding, Using, or Selling of Altered, Forged, or Falsified Documents or Plates

A. Applicable Statute

MCL 257.257(1); MSA 9.1957(1) provides:

“(1) A person who commits any of the following acts is guilty of a felony:

(a) Alters with fraudulent intent any certificate of title, registration certificate, or registration plate issued by the department.*

(b) Forges or counterfeits any such document or plate purporting to have been issued by the department.

(c) Alters or falsifies with fraudulent intent or forges any assignment upon a certificate of title.

(d) Holds or uses such a document or plate knowing the same to have been altered, forged, or falsified.

(e) Knowingly possesses, sells, or offers for sale a stolen, false, or counterfeit certificate of title, registration certificate, registration plate, registration decal, or registration tab.”

B. Elements of the Offense

MCL 257.257(1); MSA 9.1957(1) establishes one felony offense that can be committed in one of three ways.

1. Altering, forging, or falsifying motor vehicle documents or plates — The defendant altered with fraudulent intent, forged, or counterfeited any of the following:

- A certificate of title;
- A registration certificate;

* “Department” refers to the Department of State. MCL 257.12; MSA 9.1812.

- A registration plate; or,
- An assignment on a certificate of title.

2. Unlawful holding or using altered, forged, or falsified documents or plates — The defendant held or used any of the following documents or plates knowing that they had been altered, forged, or falsified:

- A certificate of title;
- A registration certificate;
- A registration plate; or,
- An assignment on a certificate of title.

3. Unlawful possession, sale, or offering for sale stolen, false, or counterfeit documents, plates, decals, or tabs — The defendant knowingly possessed, sold, or offered for sale a stolen, false, or counterfeited:

- Certificate of title;
- Registration certificate;
- Registration plate;
- Registration decal; or,
- Registration tab.

C. Criminal Penalties

For a **first conviction** of this offense, the following penalties apply pursuant to MCL 257.902; MSA 9.2602:

- Imprisonment for not less than one year or more than five years; or,
- Fine of not less than \$500.00 or more than \$5,000.00; or,
- Both.

For a **second conviction** of this offense, the following penalties apply pursuant to MCL 257.257(2); MSA 9.1957(2):

- Imprisonment for not less than two or more than seven years; or,
- Fine of not less than \$1,500.00 or more than \$7,000.00; or,
- Both.

For a **third or subsequent conviction** of this offense, the following penalties apply pursuant to MCL 257.257(3); MSA 9.1957(3):

- Imprisonment for not less than five years or more than 15 years; or,
- Fine of not less than \$5,000.00 or more than \$15,000.00; or,
- Both.

D. Licensing Sanctions

1. No points, but the conviction is reported to the Secretary of State. MCL 257.732(1)(b); MSA 9.2432(1)(b).
2. Suspension of defendant's license is mandatory for a period of one year. MCL 257.319(2)(a); MSA 9.2019(2)(a).

7.3 Possessing, Selling, or Offering for Sale a Stolen, False, or Counterfeit Certificate of Insurance

A. Applicable Statute

MCL 257.329(1); MSA 9.2029(1) provides:

“A person who knowingly possesses, sells, or offers for sale a stolen, false, or counterfeit certificate of insurance is guilty of a felony.”

B. Elements of the Offense

Defendant knowingly possessed, sold, or offered for sale a stolen, false, or counterfeited certificate of insurance.

C. Criminal Penalties

For a **first conviction** of this offense, the following penalties apply pursuant to MCL 257.902; MSA 9.2602:

- Imprisonment for not less than one year or more than five years; or,
- Fine of not less than \$500.00 or more than \$5,000.00; or,
- Both.

For a **second conviction** of this offense, the following penalties apply pursuant to MCL 257.329(2); MSA 9.2029(2):

- Imprisonment for not less than two nor more than seven years; or,
- Fine of not less than \$1,500.00 nor more than \$7,000.00; or,
- Both.

For a **third or subsequent conviction** of this offense, the following penalties apply pursuant to MCL 257.329(3); MSA 9.2029(3):

- Imprisonment for not less than five years nor more than 15 years; or,
- Fine of not less than \$5,000.00 nor more than \$15,000.00; or,
- Both.

D. Licensing Sanctions

No points, but the conviction is reported to the Secretary of State. MCL 257.732(1)(b); MSA 9.2432(1)(b).

7.4 Failing to Stop at Signal of Police Officer (“Fleeing and Eluding”)

Substantially similar statutes appear in both the Michigan Vehicle Code and the Michigan Penal Code, at MCL 257.602a; MSA 9.2302(1), and MCL 750.479a; MSA 28.747(1). Differences in the two statutes are noted in the discussion.

Note: The statute in the Michigan Vehicle Code refers exclusively to the operation of vehicles on the highways. MCL 257.601; MSA 9.2301.

A. Applicable Statutes

Both MCL 257.602a(1)–(5); MSA 9.2302(1)(1)–(5), and MCL 750.479a(1)–(5); MSA 28.747(1)(1)–(5) provide:

“(1) A driver of a motor vehicle who is given by hand, voice, emergency light, or siren a visual or audible signal by a police or conservation officer, acting in the lawful performance of his or her duty, directing the driver to bring his or her motor vehicle to a stop shall not willfully fail to obey that direction by increasing the speed of the motor vehicle, extinguishing the lights of the motor vehicle, or otherwise attempting to flee or elude the officer. This subsection does not apply unless the police or conservation officer giving the signal is in uniform and the officer’s vehicle is identified as an official police or department of natural resources vehicle.

“(2) Except as provided in subsection (3), (4), or (5), an individual who violates subsection (1) is guilty of fourth-degree fleeing and eluding, a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$500.00, or both.

“(3) Except as provided in subsection (4) or (5), an individual who violates subsection (1) is guilty of third-degree fleeing and eluding, a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$1,000.00, or both, if 1 or more of the following circumstances apply:

(a) The violation results in a collision or accident.

(b) A portion of the violation occurred in an area where the speed limit is 35 miles an hour or less, whether that speed limit is posted or imposed as a matter of law.

(c) The individual has a prior conviction for fourth-degree fleeing and eluding, attempted fourth-degree fleeing and eluding, or fleeing and eluding under a current or former law of this state prohibiting substantially similar conduct.

“(4) Except as provided in subsection (5), an individual who violates subsection (1) is guilty of second-degree fleeing and eluding, a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$5,000.00, or both, if 1 or more of the following circumstances apply:

(a) The violation results in serious injury to an individual.

(b) The individual has 1 or more prior convictions for first-, second-, or third-degree fleeing and eluding, attempted first-, second-, or third-degree fleeing and eluding, or fleeing and eluding under a current or former law of this state prohibiting substantially similar conduct.

(c) The individual has any combination of 2 or more prior convictions for fourth-degree fleeing and eluding, attempted fourth-degree fleeing and eluding, or fleeing and eluding under a current or former law of this state prohibiting substantially similar conduct.

“(5) If the violation results in the death of another individual, an individual who violates subsection (1) is guilty of first-degree fleeing and eluding, a felony punishable by imprisonment for not more than 15 years or a fine of not more than \$10,000.00, or both.”

Both of the fleeing and eluding statutes define “serious injury” in the same manner. MCL 257.602a(7); MSA 9.2302(1)(7), and MCL 750.479a(10); MSA 28.747(1)(10) provide:

“As used in this section, ‘serious injury’ means a physical injury that is not necessarily permanent, but that constitutes serious bodily disfigurement or that seriously impairs the functioning of a body organ or limb. Serious injury includes, but is not limited to, 1 or more of the following:

(a) Loss of a limb or use of a limb.

(b) Loss of a hand, foot, finger, or thumb or use of a hand, foot, finger, or thumb.

(c) Loss of an eye or ear or use of an eye or ear.

(d) Loss or substantial impairment of a bodily function.

(e) Serious visible disfigurement.

(f) A comatose state that lasts for more than 3 days.

- (g) Measurable brain damage or mental impairment.
- (h) A skull fracture or other serious bone fracture.
- (i) Subdural hemorrhage or hematoma.”

B. Elements of the Offense

The elements of **fourth-degree fleeing and eluding** are set forth in CJI2d 13.6 as follows:

1. The officer was in uniform and was performing his regular police duties. [And if the officer was in a police vehicle at night, the vehicle was adequately marked as a police vehicle.]
2. The defendant was driving a motor vehicle.
3. The police officer ordered the defendant to stop the vehicle.
4. The defendant knew of the order.
5. The defendant refused to obey the order by trying to flee or avoid being caught.

The elements of **third-degree fleeing and eluding** are the same as the elements of fourth-degree fleeing and eluding, plus one of the following elements:

- The violation resulted in a collision or accident.
- Any portion of the violation occurred in an area where the speed limit was 35 miles per hour or less. The speed limit may be posted or imposed as a matter of law.
- The defendant has been previously convicted of fourth-degree fleeing and eluding, attempted fourth-degree fleeing and eluding, or fleeing and eluding under a current or former Michigan law prohibiting substantially similar conduct.

The elements of **second-degree fleeing and eluding** are the same as the elements of fourth-degree fleeing and eluding, plus one of the following elements:

- The violation resulted in serious injury to an individual.
- The defendant has one or more previous convictions for first-, second-, or third-degree fleeing and eluding, attempted first-, second-, or third-degree fleeing and eluding, or fleeing and eluding under a current or former Michigan law prohibiting substantially similar conduct.
- The defendant has two or more previous convictions of any combination of the following offenses: fourth-degree fleeing and

eluding, attempted fourth-degree fleeing and eluding, or fleeing and eluding under a current or former Michigan law prohibiting substantially similar conduct.

The elements of **first-degree fleeing and eluding** are:

1. The elements of fourth-degree fleeing and eluding; and,
2. The violation resulted in the death of another person.

C. Criminal Penalties

For **fourth-degree fleeing and eluding**, the penalties are as follows, pursuant to MCL 257.602a(2); MSA 9.2302(1)(2), and MCL 750.479a(2); MSA 28.747(1)(2):

- Imprisonment for not more than two years;
- Fine of not more than \$500.00; or,
- Both.

For **third-degree fleeing and eluding**, the penalties are as follows, pursuant to MCL 257.602a(3); MSA 9.2302(1)(3), and MCL 750.479a(3); MSA 28.747(1)(3):

- Imprisonment for not more than five years;
- Fine of not more than \$1,000.00; or,
- Both.

For **second-degree fleeing and eluding**, the penalties are as follows, pursuant to MCL 257.602a(4); MSA 9.2302(1)(4), and MCL 750.479a(4); MSA 28.747(1)(4):

- Imprisonment for not more than ten years;
- Fine of not more than \$5,000.00; or,
- Both.

For **first-degree fleeing and eluding**, the penalties are as follows, pursuant to MCL 257.602a(5); MSA 9.2302(1)(5), and MCL 750.479a(5); MSA 28.747(1)(5):

- Imprisonment for not more than 15 years;
- Fine of not more than \$10,000.00; or,
- Both.

D. Licensing Sanctions

1. Six points. The conviction is reported to the Secretary of State. MCL 257.320a(1)(g); MSA 9.2020(1)(1)(g).
2. Following convictions of fourth- or third-degree fleeing and eluding, suspension of defendant's license is mandatory for a period of one year. MCL 257.319(2)(f); MSA 2019(2)(f), and MCL 750.479a(7); MSA 28.747(1)(7).
3. Following convictions of second- or first-degree fleeing and eluding, the Secretary of State shall revoke the defendant's driver's license. MCL 257.303(2)(g); MSA 9.2003(2)(g), and MCL 750.479a(8); MSA 28.747(1)(8).

E. Issues

Neither of the fleeing and eluding statutes is limited to prohibiting only high-speed or long-distance "police chases." The Court of Appeals found sufficient evidence to bind over the defendant for trial, where, after the police officer signalled for defendant to stop, defendant sped up slightly, made two turns, stopped the car, and attempted to flee on foot. A defendant's intent to flee or elude a police officer may be inferred from his or her acceleration after the officer signals the defendant to stop. *People v Grayer*, __ Mich App __ (No 214880, June 4, 1999).

A person may be convicted under *either* MCL 257.602a(2)–(5); MSA 9.2302(1)(2)–(5), *or* MCL 750.479a(2)–(5); MSA 28.747(1)(2)–(5), *but not both*, for conduct arising out of the same transaction. A conviction under either of the fleeing and eluding statutes does not prohibit conviction under any other applicable law for conduct arising out of the same transaction. MCL 257.602a(6); MSA 9.2302(1)(6), and MCL 750.479a(9); MSA 28.747(1)(9).

F. Related Misdemeanors

MCL 750.479a(6); MSA 28.747(1)(6), contains a separate misdemeanor offense, assaulting a police officer making a lawful arrest:

"An individual who forcibly assaults or commits a bodily injury requiring medical care or attention upon a peace or police officer of this state while the peace or police officer is engaged in making a lawful arrest, knowing him or her to be a peace or police officer, is guilty of a misdemeanor, punishable by a fine of not more than \$1,000.00, or imprisonment for not more than 2 years, or both."

The misdemeanor of assaulting a police officer making a lawful arrest requires that the prosecution prove the following elements listed in CJI2d 13.4:

1. The defendant used force to injure a police officer;

2. The injury required medical care;
3. At the time, the defendant intended to injure the officer;
4. The defendant knew that the person he was attacking was a police officer; and,
5. The officer was making a legal arrest.

Although the statute prohibits a forcible assault *or* infliction of a bodily injury, the Court of Appeals has interpreted the statute to require both a forcible assault and bodily injury requiring medical care or attention. *People v Engleberg*, 26 Mich App 309, 313 (1970). The lawfulness of the arrest, as an element of the offense, must be decided by the jury, not the court. *Id.* and CJI2d 13.5. See also *State Farm Fire & Casualty Company v Moss*, 182 Mich App 559, 562 (1989).

Refusing to comply with a lawful order or direction of a police officer under MCL 257.602; MSA 9.2302 is also a separate misdemeanor offense. The sanctions for this offense do not include license suspension, but offenders are subject to a maximum 90 day jail term and/or a maximum \$100.00 fine. MCL 257.901(2); MSA 9.2601(2).

7.5 False Application for Title, or Possession of Stolen Vehicle with Intent to Fraudulently Pass Title

A. Applicable Statute

MCL 257.254; MSA 9.1954 provides:

“Any person who shall knowingly make any false statement of a material fact, either in his or her application for the certificate of title required by this act, or in any assignment of that title, or who, with intent to procure or pass title to a motor vehicle which he or she knows or has reason to believe has been stolen, shall receive or transfer possession of the same from or to another, *or who shall have in his or her possession any vehicle which he or she knows or has reason to believe has been stolen, and who is not an officer of the law engaged at the time in the performance of his or her duty as such officer*, is guilty of a felony, punishable by a fine of not more than \$5,000.00, or by imprisonment for not more than 10 years, or both. This provision shall not be exclusive of any other penalties prescribed by any law for the larceny or the unauthorized taking of a vehicle.” [Emphasis added.]

The Michigan Supreme Court has held that proscribed possession of a vehicle known to be stolen, unless established along with intent to transfer title, would permit the Motor Vehicle Title Act to embrace more than one object, contrary to the title-object clause of the Michigan Constitution. The part of this statute that reads “*or who shall have in his possession any motor vehicle which he knows or has reason to believe has been stolen, and who is not an officer of the law engaged at the time in the performance of his or her duty as such officer*” must either be treated as surplusage or deemed inconsistent with the intent of the statute and deleted from it. *People v Morton*, 384 Mich 38, 40–41 (1970), Const 1963, art 4, §24.

B. Elements of the Offense

This statute establishes one felony offense that can be committed in one of two ways.

1. False application for title — CJI2d 24.7 sets forth the following elements:

- Defendant applied for a [certificate/assignment] of title to a motor vehicle;
- Defendant made a false statement of material fact. A material fact is an essential matter required for a valid transfer; and
- Defendant knew the statement was false when he or she made it.

2. Possession of a stolen vehicle with intent to fraudulently pass title — CJI2d 24.6 sets forth the following elements:

- The vehicle was stolen;
- Defendant received or transferred possession of the stolen vehicle;
- At that time, defendant knew or had reason to believe that the vehicle was stolen; and,
- Defendant intended to receive or transfer title of the stolen vehicle.

C. Criminal Penalties

MCL 257.254; MSA 9.1954 provides the following criminal penalties for this offense:

- Imprisonment up to ten years; or,
- Fine up to \$5,000.00; or,
- Both.

These criminal sanctions are not exclusive of any other penalties prescribed by any law for larceny or the unauthorized taking of a vehicle.

D. Licensing Sanctions

No points. The conviction is not reported to the Secretary of State.

E. Issues

In view of the original title of this chapter, the Motor Vehicle Title Act, and its stated purpose to protect the title of motor vehicles, this statute must be read as related only to conduct affecting titles or their fraudulent transfer. Conviction for possession of a stolen vehicle is unauthorized in the absence of showing of possession with knowledge that vehicle was stolen coupled with intent to fraudulently transfer title. Simple possession is not a crime under this statute. *People v Morton*, 384 Mich 38, 40 (1970).

Specific intent to fraudulently pass title is not an element of making a false application for a certificate of title; intent can be inferred from the other necessary elements. This criminal offense is distinguishable from another provision of the Vehicle Code that involves reproducing, altering, counterfeiting, forging, or duplicating certificate of title, a misdemeanor under MCL 257.222(6); MSA 9.1922(6). *People v Jensen*, 162 Mich App 171, 181 (1987).

The Court of Appeals has interpreted the word “same” in the statute to refer to the motor vehicle rather than the title. The statute requires active receipt or transfer of possession, not mere possession of a motor vehicle. *People v Harbour*, 76 Mich App 552, 559 (1977).

Materiality is an issue for the jury to decide. *United States v Gaudin*, 515 US 506 (1995).

“[E]very false statement is grounds for refusal to issue a certificate, MCL 257.219(2)(a); MSA 9.1919(2)(a), or, where the department discovers the false statement after issuance, for cancellation, revocation or suspension of the certificate. MCL 257.258; MSA 9.1958.” *People v Noble*, 152 Mich App 319, 327, 328 (1986).

7.6 False Certification

A. Applicable Statute

MCL 257.903(1); MSA 9.2603(1) provides:

“(1) A person who makes a false certification to a matter or thing required by the terms of this act to be certified, including but not limited to an application for any type of driver license, dealer license, vehicle certificate of title, vehicle registration, vehicle inspection, self-insurance, personal information, or

commercial driver training school, is guilty of a felony....”

B. Elements of the Offense

1. Defendant certified the truth and correctness of statements he or she made;
2. Certification was required by the Michigan Vehicle Code;
3. Defendant made a false statement; and
4. Defendant knew that the statement was false when he or she made it.

C. Criminal Penalties

For the **first conviction** of this offense, the following penalties apply pursuant to MCL 257.902; MSA 9.2602:

- Imprisonment for not less than one year or more than five years; or,
- Fine of not less than \$500.00 or more than \$5,000.00; or,
- Both.

For the **second conviction** of this offense, the following penalties apply pursuant to MCL 257.903(2); MSA 9.2603(2):

- Imprisonment for not less than two years or more than seven years; or,
- Fine of not less than \$1,500.00 or more than \$7,000.00; or,
- Both.

For the **third or subsequent conviction** of this offense, the following penalties apply pursuant to MCL 257.903(3); MSA 9.2603(3):

- Imprisonment for not less than five years or more than 15 years; or,
- Fine of not less than \$5,000.00 or more than \$15,000.00; or,
- Both.

D. Licensing Sanctions

1. No points, but the conviction is reported to the Secretary of State. MCL 257.732(1)(b); MSA 9.2432(1)(b).
2. If the defendant has no prior convictions for this offense within the past seven years, the Secretary of State must suspend the defendant's driver's license for 90 days. If the defendant has one or more prior convictions for this offense within the past seven years, the Secretary of State must suspend the defendant's driver's license for one year. MCL 257.319(5)(a) and (b); MSA 9.2019(5)(a) and (b).

7.7 False Statement in Citation Issued for a Civil Infraction

A. Applicable Statute

MCL 257.744a; MSA 9.2444(1) provides:

“A police officer who, knowing the statement is false, makes a materially false statement in a citation issued under [MCL 257.742; MSA 9.2442] is guilty of perjury, a felony punishable by imprisonment for not more than 15 years, and in addition is in contempt of court.”

Citations issued under MCL 257.742; MSA 9.2442 are for civil infractions only. Citations for misdemeanors are issued under MCL 257.728; MSA 9.2428.

B. Elements of the Offense

1. Defendant made a materially false statement in a citation issued for a civil infraction;
2. Defendant knew that the statement was false when he or she made it; and
3. At that time, defendant was a police officer.

C. Criminal Penalties

MCL 257.744a; MSA 9.2444(1) provides for the following penalties:

- Imprisonment for up to 15 years; and,
- Contempt of court.

D. Licensing Sanctions

No points. The conviction is not reported to the Secretary of State.

E. Issues

Perjury is defined as a wilful false swearing in regard to any matter or in respect to which an oath is authorized or required. It is always necessary to show that perjury was in regard to a material fact. *People v Kert*, 304 Mich 148, 154–55 (1943).

Materiality is an issue for the jury to decide. *United States v Gaudin*, 515 US 506 (1995).

7.8 Leaving the Scene of an Accident Resulting in Serious or Aggravated Personal Injury or Death

A. Applicable Statutes

Vehicle Code §617 and §619 require a person involved in a traffic accident resulting in death or serious injury to stop and provide information and assistance to others involved in the accident. MCL 257.617(1); MSA 9.2317(1) provides:

“(1) The driver of a vehicle who knows or has reason to believe that he or she has been involved in an accident upon either public or private property, when the property is open to travel by the public, resulting in serious or aggravated injury to or death of a person shall immediately stop his or her vehicle at the scene of the accident and shall remain there until the requirements of [MCL 257.619; MSA 9.2319] are fulfilled. The stop shall be made without obstructing traffic more than is necessary.”

MCL 257.619; MSA 9.2319 provides:

“The driver of any vehicle who knows or has reason to believe that he or she has been involved in an accident resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person shall give his or her name, address, and the registration number of the vehicle he or she is driving, also the name and address of the owner, and exhibit his or her operator’s or chauffeur’s license to a police officer or the person struck or the driver or occupants of any vehicle collided with and shall render to any person injured in such accident reasonable assistance in securing medical aid or transportation of injured person or persons.”

B. Elements of the Offense

CJI2d 15.14 sets forth the elements of this offense as follows (footnotes omitted):

“(1) First, that the defendant was the driver of a motor vehicle.

“(2) Second, that the motor vehicle driven by the defendant was involved in an accident.

“(3) Third, that the accident was on a public road or any property open to traffic by the public.

“(4) Fourth...

(a) that the accident resulted in serious or aggravated injury to another or death. ‘Serious or aggravated injury’ is a physical injury that requires immediate medical treatment or that causes disfigurement, impairment of health, or impairment of a part of the body.

...

“(5) Fifth, that the defendant knew or had reason to know that [he / she] had been involved in such an accident.

“(6) Sixth, that the defendant failed to immediately stop [his / her] car at the scene of the accident in order to render assistance and give information as required by law. The requirement that the driver ‘immediately stop’ means that the driver must stop and park the car as soon as is practical and reasonable under the circumstances and without obstructing traffic more than is necessary.”

C. Criminal Penalties

MCL 257.617(2); MSA 9.2317(2) provides for the following penalties:

- Imprisonment for up to five years; or,
- Fine of up to a \$5,000.00; or,
- Both.

D. Licensing Sanctions

1. Six points. The conviction is reported to the Secretary of State. MCL 257.320a(1)(c); MSA 9.2020(1)(1)(c).
2. Suspension of defendant’s license is mandatory under statute for a period of one year. MCL 257.319(2)(d); MSA 9.2019(2)(d), and MCL 257.617(3); MSA 9.2317(3).
3. Revocation of defendant’s license by the Secretary of State occurs when a defendant has two or more convictions of a “felony in which a motor vehicle was used” within seven years. MCL 257.303(2)(b); MSA 9.2003(2)(b).*

*See Section 6.4(D) for more information on a “felony in which a motor vehicle was used.”

E. Issues

Under Vehicle Code §619, a driver involved in an accident is required to provide the information listed in the statute to the driver or occupants of the vehicle collided with, not to third persons other than police officers. *People v*

Sartor, __ Mich App __ (No 195152, May 28, 1999). See also 1999 PA 73, which amended §619 to require drivers to give information to police officers.

Where the term “accident” appears in criminal statutes that forbid leaving the scene of a personal injury accident, it includes intentional conduct; the cause of the accident is not a concern. *People v Martinson*, 161 Mich App 55, 57 (1987).

Intent to injure is not a necessary element of failing to stop and identify at the scene of a personal injury accident. *People v Strickland*, 79 Mich App 454, 456 (1977).

A person other than the driver who is in the motor vehicle at the time of the accident may be properly charged with aiding and abetting in the commission of leaving the scene of an accident without rendering necessary assistance to an injured person. If the person is found guilty, he or she is subject to the same punishment as the driver. *People v Hoaglin*, 262 Mich 162, 172 (1933).

Even assuming the immediate death of the victim, there still remains a duty to care for the remains. *People v Hoaglin*, *supra*, 262 Mich at 169, and *People v Sartor*, *supra*.

Double jeopardy was not violated when defendant was convicted of both assault with a deadly weapon and failure to stop at the scene of a personal injury accident, when defendant pinned the victim between two cars and drove away. The two constituted different crimes; they were not submitted to the jury as alternatives or relied on by defense counsel as such. *People v Martinson*, 161 Mich App 55, 58 (1987).

Double jeopardy was not violated when defendant is charged with both felonious driving and failing to stop at an accident involving a personal injury, when defendant was speeding while pursuing another motor vehicle and struck an oncoming motorcycle. A non-negotiated plea of guilty to the one charge did not prevent trial on the other. *People v Goans*, 59 Mich App 294 (1975).

Leaving the scene of an accident resulting in personal injury, but not serious or aggravated personal injury, is a misdemeanor. MCL 257.617a; MSA 9.2317(1).

7.9 Odometer Tampering

A. Applicable Statute

MCL 257.233a(6)–(7); MSA 9.1933(1)(6)–(7) provides:

“(6) A person shall not alter, set back, or disconnect an odometer; cause or allow an odometer to be altered, set back, or disconnected; or advertise for sale, sell, use, install, or cause or allow to be installed a device which

causes an odometer to register other than the actual mileage driven. This subsection does not prohibit the service, repair, or replacement of an odometer if the mileage indicated on the odometer remains the same as before the service, repair, or replacement. If the odometer is incapable of registering the same mileage as before the service, repair, or replacement, the odometer shall be adjusted to read zero and a notice in writing shall be attached to the left door frame of the vehicle by the owner or his or her agent specifying the mileage prior to service, repair, or replacement of the odometer and the date on which it was serviced, repaired or replaced. A person shall not remove, deface, or alter any notice affixed to a motor vehicle pursuant to this subsection.

“(7) A person who violates subsection (6) is guilty of a felony.”

B. Elements of the Offense

MCL 257.233a(6)–(7); MSA 9.1933(1)(6)–(7) establishes one felony offense that can be committed six ways.

1. Altering, setting back, or disconnecting an odometer:

- Defendant altered, set back, or disconnected an odometer; and,
- Defendant’s actions caused the odometer to register other than the actual mileage.

2. Causing or allowing another to alter, set back, or disconnect an odometer:

- Defendant caused or allowed another to alter, set back, or disconnect an odometer; and,
- Defendant’s actions caused the odometer to register other than the actual mileage.

3. Selling, using, or installing a device that misrepresents actual mileage:

Defendant advertised for sale, sold, used, or installed a device that caused an odometer register other than the actual mileage.

4. Causing or allowing another to install a device that misrepresents actual mileage:

Defendant caused or allowed another to install a device that caused an odometer to register other than the actual mileage.

5. Failing to adjust an odometer or affix notice after service, repair, or replacement:

- Defendant had his or her odometer serviced, repaired or replaced;
- The odometer was incapable of registering the same mileage as before the service, repair, or replacement; and,
- Defendant, or his or her agent, failed to adjust the odometer to read zero, and failed to attach a notice to the left door frame specifying the mileage before the service, repair, or replacement.

6. Removing, defacing, or altering notice:

Defendant removed, defaced, or altered the notice affixed to the motor vehicle registering the actual mileage.

C. Criminal Penalties

MCL 257.902; MSA 9.2602 provides the following penalties:

- Imprisonment for not less than one year or more than five years; or,
- Fine of not less than \$500.00 or more than \$5,000.00; or,
- Both.

D. Licensing Sanctions

No points. The conviction is not reported to the Secretary of State.

E. Issues

The odometer statute also applies to a new or used vehicle dealer, a lessor of a leased vehicle, and an auction dealer or vehicle salvage pool operator. See MCL 257.233a(11)–(13); MSA 9.1933(1)(11)–(13).

“The odometer statute in Michigan does not require the intent to defraud....The main purpose behind the odometer statute is to protect a buyer from being defrauded by a seller who fraudulently turns back the odometer.” *People v Houseman*, 128 Mich App 17, 22 (1983).

“[F]ailure to comply with the odometer statute requirements merely renders the transaction voidable by the purchaser.” It does not automatically void the transaction. *Whitecraft v Wolfe*, 148 Mich App 40, 54 (1985).

Failure to disclose odometer mileage is a misdemeanor under MCL 257.233a(1); MSA 9.1933(1)(1). See Section 3.38 of Volume 1 of the *Traffic Benchbook*.

MCL 257.233a(15); MSA 9.1933(1)(15) governs the civil liability of a person who, with intent to defraud, violates subsections (1) or (6) of the statute, or of a dealer who fails to retain odometer mileage statements for five years. These persons are liable in an amount equal to three times the amount of actual damages sustained or \$1,500.00, whichever is greater, plus costs and reasonable attorney fees in the case of a successful recovery of damages.